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ABSTRACT

Noting that the impressions left by the large, bold type of newspaper headlines have frequently resulted in libel suits, a study explored the individual and interactive roles played by defamatory headlines and news articles in a reader's perception of the contents. Four separate versions of a news article and its headline were prepared by the researcher. Subjects, 40 students from an undergraduate biology course at New Mexico State University, were randomly divided into four groups. Each group was then given one of four versions of a news article and headline prepared by the researcher. Each member of the group read the article and completed a questionnaire. The results indicated that a headline that identifies someone and falsely defames that person could cause more damage than a libelous article. These results suggest that courts should be aware of the fact that a medium-sized headline can significantly damage a reputation, regardless of what the article states. Therefore, the current trend of examining the accompanying article to such a headline in order to determine libel must be reevaluated. (DF)

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Headlines in Newspapers and Libel Law:

A need to reconsider the traditional approach?

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Introduction

Because of the way many people read a newspaper,[1] and because of the impressions that large and bold type can create,[2] newspaper headlines have remained a somewhat unsettled corner of libel law.

Essentially, headlines are designed to summarize articles, suggest their level of importance, serve as a graphic device and attract readers to a story.[3] Editors are well aware of the "sales" potential of a headline[4], and occasionally this results in headlines which tend to distort or exaggerate the information contained in the attached article.[5] This journalistic practice is no great secret to the courts[6] nor is it by any means new. For example, as far back as 1927, a Kansas court stated:

> It is the practice of some newspapers deliberately to put posion in a headline and follow it with a weak antidote in the body of the article.[7]

At the very core of the problem with potentially libelous headlines is the nature of the headline itself. Editors are expected to summarize in a handful of words what a story

of several hundred words might detail.[8] Toward that end, editors must sometimes cut linguistic corners and resort to a specialized "headline-ese" jargon.[9]

The problem can become especially acute in stories concerning criminal activity, as editors grope for a word that describes the story and also fits reasonably into the allotted space. For example, a newspaper in South Carolina published the following headline atop a story about an IRS tax lien filed against a man to ensure satisfaction of unpaid taxes:

> "Tax Evasion Charges Amounting to
> $1,971,174 Filed Against the Jones
> Family; Four Companies."

The court ruled for the plaintiff claiming that a jury could reasonably have concluded that he was charged with a crime, even though the story made clear that no criminal charges were filed.[10] Perhaps, the words "tax lien," in the eyes of the editor were not sufficiently provocative; perhaps the editors felt the public would not understand what it meant; perhaps they did not fit into to allotted column width.

In another case, a headline writer's use of the words "brothel quiz" in a headline about an investigation may have sold newspapers but also led to a ruling for the plaintiff. The story was about two persons planning to testify before a grand jury about alleged harassment by

a sheriff relating to a burglary case. The headline stated:

"Pearcy Takes Personal Control of
Grand Jury in Brothel Quiz."

The court ruled that the words "brothel quiz" created a highly misleading impression of the plaintiffs among readers, despite what the story stated.[11] Indeed, the use of fewer--and sometimes shorter--words in writing headlines enhances their "red flag" potential. The problem has been alleviated somewhat with the kerning capacities of modern video display terminals. But, while judges sympathize with the space considerations facing headline writers, their empathy has its limits. And, certainly the claim that space considerations necessitated using a shorter (and defamatory) word is not a viable defense for a publisher.[12]

Another unique aspect of libelous headlines is their heavy reliance on some other form of expression: the attached article. While the actionability of all expression is contingent on the context in which it appears, the headline has assumed a special role in that most courts have carefully linked the headline and story while others have looked at the allegedly libelous headline in isolation.

Indeed, most courts have stopped short of declaring a newspaper piece libelous without considering the headline and article as a "unit."

For example, in a 1958 case, a newspaper headline stated:

"Two Men Bound to Higher Court
In Auto Theft"

That headline appeared atop a story about an automobile accident in which the plaintiffs were injured. The court in Georgia ruled that it became entirely clear from a reading of the article that the plaintiffs were not the persons referred to in the headline, despite plaintiff claims that readers would peruse the story, see their names in it and link those names with the complained-of headline. The court declared that, when read as a unit, the headline and article were not libelous.[13]

At times, courts have taken the "unit" approach to the logical limit. One early example illustrates the point. A 1926 decision by South Carolina's Supreme Court resulted in a finding that a defamatory headline was rendered innocuous by the

last sentence of the article.[14]

On the other hand, some courts have decided to look at the headline as a separate publication, without considering the "unit" context.[15] A 1963 decision of the New York Supreme Court stated that while in the instant case the court would consider the headline and attached article together, it admitted that the "unit" approach

> is not applicable in every case where, by reason of the nature of the libelous headline and the accompanying explanatory article, the headline itself may be appraised separately as a libelous publication. [16]

Courts have literally run the gamut of possible outcomes in cases involving libelous headlines. In some decisions, it was held that defamatory headline language can be "rescued" by a non-defamatory article.[17] Other courts have found the reverse: that an innocuous headline can "save" a libelous story.[18] Of course, these two categories of decisions subscribe to the "unit" approach. There have been exceptions; some courts discarded the unit approach in finding that a non-defamatory story was renedered libelous by the addition of the headline.[19]

A lengthy list of precedents, dating back to the previous century, suggests that the most common approach is the "unit" view of articles and headlines. In an oft-quoted headlines and libel decision, Oklahoma's Supreme Court perhaps offered the simplest and best explanation for the "unit" approach:

> Headlines may enlarge, explain or restrict or be enlarged, explained or restricted (by the article)[20]

In more recent rulings, courts have declared that the headline should not be isolated in gauging actionability[21] and that the key in determining libel in a case involving the headline is to gather a "total impression" from the unit.[22]

Perhaps, the ideal illustration of the "unit" approach is in a case where a potentially libelous headline appears atop a story which enjoys a qualified privilege.[23] Generally in those cases courts have ruled that the same privilege applies to the headline if the headline is deemed to constitute a "fair index" of the article[24] and contains no defamatory additions. In some cases, courts have found that a headline which "exaggerates" the material contained in a privileged story retains the privilege.[25]

For example, in a case involving a subhead, the newspaper published the following headline:

"Man Held in Jail Since Fatal
Crash in December"

The story, a truthful account of judicial proceedings, enjoyed a qualified privielege in its report of how the plaintiff was convicted of criminal negligence in connection with a car accident. The court held that the headline disgraced the plaintiff and held him up to public scorn and ridicule ; while agreeing that the headline and article should be read as a unit, the court found a shattered unit in which the headline was not a fair index of the article because it suggested a greater level of wrongdoing by the plaintiff than did the crime of which he was convicted.[26] Much earlier, a court found that the one-word label headline "Swindling" was not a fair index of a privileged article about a man's arrest on a charge of obtaining goods by false pretenses.[27]

Purpose of the study

This study is designed to test the viability of the unit approach to gauging headline actionability. With increasing emphasis on readers' short attention spans and "scanning" habits when looking at a newspaper, this study seeks to discover the individual and interactive roles played by defamatory headlines and news articles in a reader's perception of a unit's contents.

Method

The study was designed as a 2x2 post-test only laboratory experiment.

Four separate versions of a news article and headline were prepared by the researcher. The headlines were set in 24 point type and the articles appeared in 9-point type on a 13-pica column. Each of the versions of the article dealt with the arrest of a man charged with the armed robbery of a food store. The four versions were distinguished as follows:

> VERSION A: Headline stated: "Thief arrested in downtown area." Story accused the man of robbing the store, called him a "thief" and generally lacked the presumption of innocence accorded suspects in arrest

stories. (Defamatory headline, defamatory article).

VERSION B: Story was the same as in version A, but the headline atop this version stated: "Suspect arrested in downtown area." (Defamatory article, non-defamatory headline).

VERSION C: Headline is identical to the one in Version A. Story was carefully attributed to police and phrased to avoid any suggestion of guilt. Person is simply "arrested and charged" in this version and not called a "thief." (Defamatory headline, non-defamatory article).

VERSION D: Headline is identical to that in Version B. Story is identical to that in Version C. (Non-defamatory headline and non-defamatory article).

Forty research subjects from an undergraduate biology class at New Mexico State University participated in the study. The subjects were randomly assigned to one of the four treatment groups; thus each group had an n of 10 subjects. Subjects received a copy of the article/ headline unit, read it and completed a brief questionnaire. The questionnaire asked them:

1. To rate the likelihood that the person about whom the article was written was a "thief."

2. Their belief as to whether or not the person arrested was guilty of having committed the crime as charged.

Results

Overall, on the 1-10 scale measuring the likelihood that the person is a "thief," the grand mean was 5.77; (on the scale, a rating of 1 was a "very low" and a rating of 10 was a "very high" likelhood).

The highest likelihood score came from Group A (7.10) and the lowest from Group D (4.60). (See Table 1)

Table 1

Ratings of Likelihood That Person is "Thief"

Version of unit	n	Mean likelihood score
A. Defamatory headline Defamatory article	10	7.10
B. Non-defamatory headline Defamatory article	10	5.00
C. Defamatory headline Non-defamatory article	10	6.40
D. Non-defamatory headline Non-defamatory article	10	4.60

The scores were analyzed using a two-way analysis of variance. As detailed in Table 2, the only significant result was the headline's main effect. No significant effects were found either for the article or for the interactive effect of the headline and article.

Table 2

Two-Way ANOVA Table for Article, Headline and Interactive Effects

Source	SS	df	MS	F	p
Article	3.03	1	3.03	1.88	ns
Headline	38.03	1	38.03	23.72	p lt .001
Interactive	.23	1	.23	.14	ns
Error	57.70	36	1.60	----	----
Total	98.90	39	----	-----	----

The second question, using a Likert-type scale posed the following statement to the subjects: "In my opinion, George Yancey was guilty of the robbery of the convenience store."

In group A, which read the defamatory story and defamatory headline, four of the 10 subjects strongly agreed and five agreed. At the other extreme, among subjects in group D (non-defamatory headline and non-defamatory story), six agreed and three disagreed. See Table 3.

Table 3

Response to statement:"In my opinion, George Yancey was guilty of the robbery of the convenience store."

Response	Group A	Group B	Group C	Group D
Strongly agree	40%	20%	30%	0%
Agree	50	40	40	60
Disagree	10	30	30	10
Strongly disagree	0	10	0	10

Discussion

The results of the study suggest that a "red flag" headline may actually carry more harm than a libelous story. Subjects reading the defamatory headline and defamatory story gave a mean rating of 7.1 on the 1-10 scale representing the likelihood that the man arrested was a thief.

When the story was "cleaned up," the rating dropped to 6.4; but, when the headline's opening word was changed from "thief" to "suspect," the rating dropped to 5.0.

Subjects in the two groups reading the non-defamatory headline did not vary much in their ratings whether they read the defamatory (5.0) or non-defamatory (4.6) article.

The analysis of variance found that the presence of the defamatory headline did increase a subject's likelihood of perceiving the arrested person as a "thief."

Of course, these results must be weighed in perspective. Since one of the concerns relating to libelous headlines is the habits of the newspaper reader, it must be allowed for that in the experiment subjects were given a news article

and headline and asked to read both. In a real-life situation, of course, many readers would only have read the headline and skimmed or ignored the actual article.

Of course, in this experiment, since the person was not identified in the headline, there was no possibility of libel occurring solely on the basis of a reading of the headline.

Nonetheless, the results indicate that a headline (all that is often read) --with its bold type and lasting impression-- may actually carry more weight in a reader's mind. It appears that a headline that identifies someone and falsely defames that person could cause substantial damage without any input from the text of the article.

Courts need to be sensitive to the fact that a moderately sized headline can significantly damage a reputation, regardless of what the article states. It seems that the majority of court decisions involving headlines and libel have failed to take into account both reader habits and the power of the headline to damage a reputation. The "unit" approach, whereby the headline and accompanying article are considered as a contextual unit, needs re-examination.

Notes

1. Authors of both journalism textbooks and court rulings dealing with defamatory headlines take note of the habits of newspaper readers. For example, a New York court noted in Schermerhorn v Rosenberg 6 Med. L. Reptr. 1376, at 1382 (1980) that headlines are often all that is read by the casual reader. Another court said in some cases, people read only the headline and news lead and a court should consider that habit in determining actionability. McNair v Hearst Corp., 494 F2d 1309 (1974). In Gambuzza v Time Inc., 239 NYS2d 466, at 470 (1963), the court said: "A person passing a newstand may be able to catch a glimpse of a headline without the opportunity or desire to read the accompanying article, or may skim through the newspaper jumping from headline to headline." See also Ashley, P. Say it safely. Seattle: University of Washington Press, 1969, p. 29; Edwards, V.E. Journalism in a free society. Dubuque: William C. Brown, 1970, p. 149.

2. The classic case illustration of the use of what was considered oversized and hence misleading headlines occurred in Sprouse v Clay Communication, 1 Med. L. Reptr. 1695 (1975). In that case, the West Virginia Supreme Court of Appeals said (at 1700): "Where oversized headlines are published which reasonably lead the average reader to an entirely different conclusion than the facts recited in the body of the story, and where the plaintiff can demonstrate that it was the intent of the publisher to use such misleading headlines to create a false impression on the normal reader, the headlines may be considered separately with regard to whether a known falsehood was published." Hence, the court declared that a finding of reckless disregard for the truth could be sustained based solely upon the headline in certain settings. What readers have a right to expect from a headline and what they actually get is notalways the same thing, the Nebraska Supreme Court said in Fitch v Daily News, 217 NW 947,

(1928). The court said that readers expect bold headlines to summarize the story, "but they often lack in this respect" (at 950). In some instances, courts have included in their rulings a detailed description of the headline including the blackness of the type, its point size and column width. For example, in Empire Printing Company v Roden, 247 F2d 8 (1957), the court said the headline was in black type, one and a fourth inches high and extended across the entire front page (at 14).

3. Berry, T.E. Journalism in America. New York: Hastings House, 1976, p. 147. Stovall, J.G., Self, C.C. & Mullins, L.E. On-line editing. Englewood Cliffs: Prentice Hall, 1984, p. 161.

4. Even in a large number of cases where the courts found for the defendant publisher, words such as "exaggerated" have been used by judges to describe a headline. In Spanel v Pegler, 160 F2d 619 (1947), for example, the court called the headline "provocative."

5. In Sprouse, note 2 supra, the court accused the newspaper editors of "deliberate use of misleading words in oversized headlines" (at 1696). Of course, one of the problems with a headline can be what it suggests rather than what it actually states. In Empire Printing, (note 2 supra), the court said a headline can defame through "indirection, insinuation and association." In other cases, courts have found headlines defamatory by "implication" Lane v Washington Daily News, 85 F2d 822 (1936) or by deliberately giving a false impression. Brophy v Philadelphia Newspapers, 6 Med. L. Reptr. 2419 (1980).

6. In fact, a reading of cases involving allegedly defamatory headlines finds that many of them go into detail

regarding the problems and responsibilities of headline writers. In Wiley v Oklahoma Press Publishing Co., 233 P 224 (1927), the Oklahoma court said that headline writing is of "such importance that on the large publications men especially skilled in grasping the important or attractive features of the article and condensing them into a few words are employed as headline writers."

7. Jerald v Houston, 261 P 851, at 866 (1927).

8. Courts are generally careful to note that editors and not reporters write headlines. And, in a handful of cases involving allegedly libelous headlines atop wire dispatches, courts have noted that wire services do not provide headlines (or even suggestions for headlines) to their subscriber newspapers and, as a result, a wire service is not responsible for a defamatory headline attached by the newspaper to an innocuous article. See Marteney v United Press, 224 F2d 714 (1957) and Bryant v AP , 11 Med. L. Reptr. 1090 (1985).

9. Ashley, note 1 supra, says that the use of a specialized headline vocabulary often creates problems. A number of journalism texts publish "headline dictionaries" designed to procide headline writers with a handy list of "safe" synonyms. See, for example, Crowell, A.A. Creative news editing. Dubuque: William C. Brown, 1975, pp. 138-141. As an illustration of this problem, a look at a 1977 case is instructive. A newspaper used the word "rigged" to describe bid specifications; in the story the proper--and apparently synonymous--term was "proprietary." The Louisiana court in Forrest v Lynch, 3 Med. L. Reptr. 1187, at 1188 said the use of "rigged" suggested improper and illegal conduct and was not synonymous with the word used in the story. The court stated: "The copy editor's

use of poor and erroneous choice of words in writing headlines constitutes fault."

10. Jones v Garner, 158 SE2d 907 (1968).

11. Cochran v Indianapolis Newspapers, 372 NE2d 1211 (1978).

12. See Garst, R.E. & Bernstein, T.M. Headlines and deadlines: A manual for copy editors. New York: Columbia University Press, 1961, p. 142. It should be noted, however, that while courts have generally ignored space restrictions, in some instances they have found that time restrictions should be taken into account. A federal court in North Carolina ruled in 1982 that an error in a headline was inadvertent and was caused by deadline pressure. The court granted summary judgment in Bellamy v Arno Press, 8 Med. L. Reptr. 1420.

13. Ledger-Enquirer Co. Inc. v. Brown, 105 SE2d 229 (1958).

14. Ross v Columbia Newspapers Inc., 221 SE2d 770 (1926).

15. The case most often cited as illustrating this position is Las Vegas Sun v Franklin, 74 Nev. 282, 329 P2d 867 (1958).

16. Gambuzza v Time Inc., note 1 supra.

17. Reardon v News Journal, 164A2d 263(1960); Ledger-Enquirer note 13 supra; Graham v New York News , 2 Med. L. Reptr. 2356 at 2358 (1977). In Cook v Atlanta Newspapers, 107 SE 2d the headline stated: "Make name 'Cook' Crook asks court." The court said that construction of the article and headline was such that a reader could easily determine that the headline was a play on words and did not refer to plaintiff as a crook.

18. Tate v Nicholson Publishing Co., 47 So. 774 (1936).

19. Empire Printing Co.v Roden, note 2 supra; Reardon v News Journal, note 17 supra.

20. Wiley vOklahoma Press Publishing Co., note 6 supra.

21. See Graham v New York News, note 17 supra, at 2358 and Shapiro v Newsday, 5 Med. L. Reptr. 2607 (1980).

22. Sprouse v Clay Communication, note 2 supra.

23. Under the doctrine of qualified privilege, a news medium may publish with impunity a fair and accurate report of judicial, legislative and executive governmental proceedings. Thus, for example, a fair and accurate account of a trial witness' testimony (which contains potentially libelous allegations) is privileged.

24. There is a lengthy list of precedents for the concept of the "fair index." These include: Campbell v New York Evening Post, 245 NY 320, 157 NE 153 (1927); Stice v Beacon Newspaper Corp., 185 Kan 61, 340 P2d 396 (1959); Fitch v Daily News, note 2 supra; Morning Journal Association v Duke, 128 F 657 (1904); Bray v Providence Journal, 101 RI 111, 220 A2d 531 (1966); Deluca v NY News, 4 Med. L. Reptr 2312 (1978); Schermerhorn v Rosenberg, note 1 supra; Fredricksen v New York Post, 8 Med. L. Reptr. 1799 (1982). It should be noted that in the Duke and Deluca cases, the headlines were determined not to constitute a fair index.

25. See Stice, note 24 supra, and Beyl v Capper Publications Inc., 180 Kan 525, 305 P2d 817 (1957). In the Stice decision, the court noted that the headline did not actually exaggerate the contents of the article, but added: "If they did (exaggerate),

mere exaggeration would not show express malice and prevent the defendant from interposing the defense of qualified privilege (at 404)."

26. Adle v Herald Co., 36 NYS2d 905 (1942).

27. In one of the earliest cases involving a potentially libelous headline, a Ohio court in 1860 found that the "fair index" standard did not apply to preliminary proceedings before a justice of the peace. In Cincinnati Gazette Co. v Timberlake, 10 Ohio St 548, the court said that the language of the article, including the headline, made it doubtful if the unit could be considered a fair and impartial report.